

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ALAN LEE ERWAY,

Plaintiff,

v.

Case No. 1:19-cv-13388

District Judge Thomas L. Ludington

Magistrate Judge Anthony P. Patti

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**ORDER GRANTING AS UNOPPOSED DEFENDANT'S MOTION TO  
STAY THE CASE (ECF No. 18)**

Currently before the Court for consideration is Defendant's motion to stay proceedings in this fully briefed<sup>1</sup> Social Security case. (ECF No. 18.) According to the motion, one of the issues in the case is whether Plaintiff forfeited an Appointments Clause claim concerning the appointment status of the Administrative Law Judge (ALJ), and "[o]n September 1, 2020, the Sixth Circuit Court of Appeals issued a decision in *Ramsey*, holding that the plaintiffs had not forfeited their Appointments Clause claims by failing to raise them during administrative proceedings. *Ramsey v. Comm'r of Soc. Sec.*, --- F.3d ---, 2020 WL

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<sup>1</sup> Plaintiff filed his motion for summary judgment (ECF No. 14) on March 12, 2020, and Defendant filed its cross-motion for summary judgment (ECF No. 15) on April 3, 2020.

5200979 (6th Cir. Sept. 1, 2020).” (ECF No. 18, PageID.1146.) Thus, Defendant asserts, because “the time to seek rehearing or petition for certiorari in the above-referenced cases has not yet passed and no mandate has issued,” the Court should stay this case “until the conclusion of the appellate proceedings, including the resolution of a petition for rehearing if one is filed.” (ECF No. 18, PageID.1147.)<sup>2</sup>

Defendant filed the instant motion on September 18, 2020. (ECF No. 18.) “A response to a nondispositive motion must be filed within 14 days after service of the motion.” E.D. Mich. LR 7.1(e)(2)(B). Thus, in the absence of a scheduling order stating otherwise, Plaintiff’s response to Defendant’s motion would have been due on or about October 2, 2020. *See* Fed. R. Civ. P. 6(a), (d). Although the motion indicates that Plaintiff was not consenting to the requested stay (ECF No. 18, PageID.1148), to date, Plaintiff has not responded to Defendant’s motion.

The local rules of the Eastern District of Michigan required Plaintiff to file a response if he wished to oppose Defendant’s motion. *See* E.D. Mich. LR 7.1(c)(1) (“A respondent opposing a motion must file a response, including a brief and supporting documents then available.”) (emphasis added). Opposition to a motion is deemed waived if the responding party fails to respond or otherwise oppose the motion. *See Humphrey v. United States Attorney General’s Office*, 279 F. App’x

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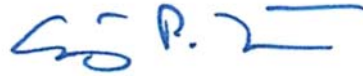
<sup>2</sup> The motion also indicates that Defendant will file an update with the Court no later than October 31, 2020, which is 15 days after the expiration of the time to seek rehearing in *Ramsey*. (ECF No. 18, PageID.1147.)

328, 331 (6th Cir. 2008). Because Plaintiff has not responded to Defendant's motion to stay, Defendant's motion can and will be construed as unopposed.

Accordingly, Defendant's motion to stay (ECF No. 18) is **GRANTED as unopposed**. The case will be stayed pending conclusion of appellate proceedings in *Ramsey v. Comm'r of Soc. Sec.*, 973 F.3d 537 (6th Cir. 2020), or until the Court orders otherwise.

**IT IS SO ORDERED.**

Dated: October 22, 2020



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Anthony P. Patti  
UNITED STATES MAGISTRATE JUDGE